



UNITED STATES PATENT AND TRADEMARK OFFICE

9

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,377	10/31/2003	Jens Mogens Nielsen	674509-2052.1	3024
20999	7590	11/07/2007		
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 11/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/699,377	Applicant(s) NIELSEN ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44, 47 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44, 47, 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 12, 2007 has been entered.

Claims 1 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in claim 1 if the coating for the first food material and the barrier composition are the same composition or a different one. It is unclear in claim 49 as to which composition is coated on a food material because claim 1, as a whole, is a composition. An amendment to the claims clarifying this issue would overcome the rejection.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a coating that is also the barrier composition, does not reasonably provide enablement for any and all coating compositions with the barrier composition of claim 1. The

specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims. An amendment to claim 1 clarifying that the barrier composition and the coating composition are the same would overcome the rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-44, 47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woldhuis (EP 0403030) in view of any of Loh (7,226,630) or Gaonkar (7,229,654) or Smith (2004/0166204).

Applicants' amendments to the claims and arguments relating to the reliance upon Woldhuis alone are sufficient to overcome the rejection.

Woldhuis discloses a coating for cheese made of wax and a wax-like fat of the composition of the claims (abstract, page 3, lines 5-23 and claims 1-2). The composition was applied to cheese and found to prevent or reduce the movement of water from the product (page 3, lines 24-32). Wax

sources applied are shown in the Tables. Both short and long-chained fatty acids are esterified to the glycerol of the molecule in the chain-length specified by the claims. Although branched fatty acids are not mentioned, it would have been obvious to expect branched and straight chain fatty acids to be included in a fatty acid of a chain length of more than 4.

Although the molar ratio of ingredients of claims 17-21 is not mentioned, the ratio would have been expected from the triglyceride description at page 3, lines 15-18. It is appreciated that the interesterification method by which the fat is made is not mentioned in the reference, but the claims are directed to the product and not to the method by which it is made. Further one of ordinary skill in the art would have expected a triglyceride containing a lot of short-chain fatty acids would have been made by interesterification because this type of triglyceride is not typically found in nature. The claims appear to differ from Woldhuis in the use of the coated cheese product in a multi-component foodstuff. Each of Smith (examples 1 and 2), Goankar (example 2) and Loh (example 5) disclose multi-component food products that have cheese in them. In each patent coated cheese is used in a sandwich formulation. The coated cheese products of the secondary references all have the ability to reduce the movement of water from the

products. With the references of Goankar, Smith and Loh before him, it would have been obvious to one of ordinary skill in the art to utilize the coated cheese of Woldhuis in a multi-component foodstuff, such as a cheese sandwich, in order to optimize the organoleptic properties of prepared foods.

Claims 27-37 appears to differ in the extent of wax in the coated foodstuff. But no unobvious or unexpected result is seen to result from this feature because the extent of coating applied to a food would have been within the control of the food processor. Some foods may require more protective coating than other. Although the amount of auxiliary material of claims 41-44 is not mentioned, no unobvious or unexpected result is seen from the particular amount used in the process.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record further shows the state of the art relating to coating food components to reduce the movement of water from the product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A. Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on (571) 272-1401 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden

CAROLYN PADEN 11-6-07
PRIMARY EXAMINER
GROUP 1300 1761